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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,255	05/04/2001	Dennis Charles Clemes	032228.0006	6320

30678 7590 07/25/2003

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

11

DATE MAILED: 07/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/848,255

Applicant(s)

CLEMES ET AL.

Examiner

Christopher P Bruenjes

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

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ADVISORY ACTION

REPEATED REJECTIONS

1. The 35 U.S.C. 103 rejection of claim 1 over Razeto et al in view of Clemes is repeated for the reasons previously of record in Paper #3, Pages 2-4 Paragraph 1.

ANSWERS TO APPLICANT'S ARGUMENTS

2. Applicant's arguments filed in Paper #5 regarding the 35 U.S.C. 103 rejection of claim 1 over Razeto et al in view of Clemes have been fully considered but they are not persuasive.

In response to applicant's argument that Razeto in combination with Clemes do not meet every limitation, Razeto in Figure 2 teaches that Figure 4 represents layer 18, by showing that Figure 4 is a magnified representation of layer 18 in Figure 2. Although the specification may present other situations in which layer 18 is not represented by Figure 4, the disclosure based on the drawings do teach layer 18 comprising a paper layer and polyethylene coating layer. Furthermore, reference numbers 12 and 14 are thermal seals and inherently in order to thermal seal layers together the two layers are similar plastics, since layer 16 has an inner layer of polyethylene, layer 18 inherently also has an inner layer of polyethylene in order to form a thermal seal between the two layers.

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Razeto further discloses that the paper of layer 18 is impregnated with a gas releasing mixture, and it would be obvious to one of ordinary skill that part of the impregnated gas releasing mixture would remain on the surface and would therefore be present between the paper and plastic layers. Also, the impregnation of the paper layer with the gas releasing mixture and a coating of polyethylene has an equivalent function to a coating of a gas releasing mixture between the paper layer and a coating of polyethylene. Both function to release gas quickly in order to preserve fruits and vegetables before the slow diffusion of gas from the granulated material in the pocket formed by the two sheets heat sealed together. One of ordinary skill in the art would have recognized that taking a gas releasing mixture and coating it onto a paper layer or impregnating the paper layer serve the same function and determining which method of adding the mixture to the structure to use would be within the level of ordinary skill in the art, absent the showing of unexpected result.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 703-305-3440.

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The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB

July 23, 2003


SANDRA M. NOLAN
PRIMARY EXAMINER